

FCC MAIL ROOM

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC 01M-31

00599

2001 AUG 13 P 3:13

In the Matter of	)	
	)	
C. F. Communications Corp., et al.,	)	EB Docket No. 01-99
	)	
Complainants,	)	
	)	
v.	)	File Nos. E-93-34, E-93-35, E-93-36,
	)	E-93-37, E-93-38, E-93-40, E-93-41,
	)	E-93-42, E-93-43, E-93-44, E-93-45,
Century Telephone of Wisconsin, Inc., et al.,	)	E-93-46, E-93-47, E-93-48, E-93-49,
	)	E-93-50, E-93-56, E-93-58, E-93-59,
Defendants.	)	E-93-60, E-93-61, E-93-62, E-93-73,
	)	E-93-74, E-93-081

MEMORANDUM OPINION AND ORDER

Issued: August 3, 2001

;

Released: August 8, 2001

Under consideration are: (a) Complainant Ascom Holding, Inc.'s Motion to Compel Answers to Interrogatories and the Production of Documents from Defendant Sprint Corporation and Memorandum in Support, filed on July 13, 2001, by Ascom Holding, Inc. ("Ascom"); and (b) an Opposition to Motion to Compel Filed by Complainant Ascom Communications, Inc. ("Opposition"), filed on July 25, 2001, by Carolina Telephone and Telegraph Company ("Carolina"), United Telephone Company of Pennsylvania ("Pennsylvania"), and United Telephone Company of Florida ("Florida"). (Carolina, Pennsylvania, and Florida will be collectively referred to as "Sprint.") These pleadings relate to the complaints associated with File Nos. E-93-43, E-93-44, and E-93-45.

Ascom seeks an order compelling Sprint to provide "substantive answers" to interrogatory numbers 3-22, 25-34, 37-42, and 45 propounded in Ascom's First Set of Interrogatories, and to produce documents responsive to document request numbers 2-22 and 25-27 set forth in Ascom's First Set of Requests for Production of Documents. Sprint opposes the motion, contending that Ascom's requests are too broad and unnecessarily burdensome. For the reasons which follow, Ascom's motion will be granted in part and denied in part.

General Objections. (a) Sprint's objections to Definition Nos. 2 and 3 are sustained for the reasons stated in Sprint's Answers to Ascom's first sets of interrogatories ("Answers")<sup>1</sup> and in Sprint's Opposition.

---

<sup>1</sup> Answers to the First Set of Interrogatories of Complainant Ascom Communications, Inc., n/k/a Ascom Holding, Inc., filed on July 13, 2001, by Carolina; Answers to the First Set of Interrogatories of Complainant Ascom Communications, Inc., n/k/a Ascom Holding, Inc., filed on July 13, 2001, by Pennsylvania; and Answers to the First Set of Interrogatories of Complainant Ascom Communications, Inc., n/k/a Ascom Holding, Inc., filed on July 13, 2001, by Florida.

(b) Sprint's objection to Definition No. 5 is sustained for the reasons stated in Sprint's Answers and in Sprint's Opposition. The information to be provided by Sprint shall be limited to Carolina, Pennsylvania, and Florida.

(c) Sprint's objection to the substitution of Ascom's Exhibit B is overruled for the reasons stated in Ascom's Motion to Compel. Sprint's responses to the applicable interrogatories and document requests should be based on the June 21, 2001, Exhibit B.

(d) Sprint's objection to providing information for the period prior to January 11, 1991, is sustained in part. For the reasons stated in Sprint's Opposition,<sup>2</sup> it will not be required to provide any information or documents for the period prior to the following dates: (i) for Carolina, July 20, 1988; (ii) for Pennsylvania, August 5, 1988; and (iii) for Florida, July 20, 1988. Nor will Sprint be required to provide any information for the period subsequent to Ascom's sale of its payphones. The post-sale period of time does not "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules.

(e) In all other respects, Sprint's General Objections are overruled.

Interrogatories 3-10, 27(b), 28-29; Document Requests 3-8, 14. Sprint's objections are sustained in part. Sprint need only provide the requested information and documents with respect to the payphone lines and invoices of Carolina, Pennsylvania, and Florida. In all other respects, Sprint's objections are overruled. The information and documents requested "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. The fact that Ascom's records may reflect some of the same information provides no basis for precluding its production from Sprint.

Interrogatories 11-16, 30(a), 31. Sprint's objections are sustained in part. Sprint need not provide information or documents with respect to ANIs for which Sprint did not provide service or for which Sprint did not provide service for Ascom. In addition, Sprint need only provide the requested information with respect to payphone lines. In all other respects, Sprint's objections are overruled. The information and documents requested "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. The fact that Ascom's records may reflect some of the same information provides no basis for precluding its production from Sprint.

Interrogatories 17-19, 22(b), 27(a) and (c), 30(b) and (c), 34; Document Requests 12, 17(b), 22. Sprint's objections are sustained for the reasons stated in Sprint's Answers and in Sprint's Opposition. In light of this ruling, the requested documents need not be produced.

Interrogatories 20-21, 22(a); Document Requests 15-16, 17(a), 18-19. Sprint's objections are overruled. The *HDO*, at paragraph 21, "encourage[d]" the parties to consider the use of "proxies" in determining the number of public and semi-public payphones the complainants owned. The *Liability Order*, 15 FCC Rcd 8759 (2000), at paragraph 34, stated that the ratio of the defendant's public to semi-public payphones "may be an appropriate starting point for the damages inquiry." Therefore, information concerning Sprint's payphones "appears reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. The

---

<sup>2</sup> See also Complainant's Opposition to Defendant's Motion and Memorandum to Compel Answers to Interrogatories from Complainant Ascom Holding, Inc., filed by Ascom on July 25, 2001, at note 5.

fact that some of the information sought may be available in Ascom's records provides no basis for precluding its production from Sprint.

Interrogatories 25-26, 32, 37-42, 45; Document Requests 2, 9-11, 13, 25-27. Sprint's objections are sustained to the extent that information and documents contained in publicly available tariffs need not be provided. (However, Sprint must supply references or citations to the relevant tariffs.) In all other respects, Sprint's objections are overruled. The information and documents requested "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. The fact that some of the information sought may be available in Ascom's records provides no basis for precluding its production from Sprint.

Interrogatory 33; Document Request 21. Sprint's objection is sustained to the extent that it need not provide information or produce documents relating to business line subscribers or residential line subscribers. Such information and documents do not "appear[ ] reasonably calculated to lead to the discovery of admissible evidence." Section 1.311(b) of the Commission's Rules. In all other respects, Sprint's objection is overruled.

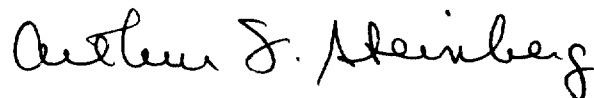
Document Request 20. Sprint's objection is sustained to the extent that all pleadings and other filings made before the Commission and courts need not be produced. In all other respects, Sprint's objection is overruled. The fact that Ascom's records may reflect some of the same information provides no basis for precluding its production from Sprint.

Sanctions. In its motion, Ascom requests the imposition of sanctions against Sprint in the form of the costs of preparing the motion to compel. This request must be denied. The Presiding Judge has no authority under the Commission's rules to impose sanctions such as those requested here.

Accordingly, IT IS ORDERED that Complainant Ascom Holding, Inc.'s Motion to Compel Answers to Interrogatories and the Production of Documents from Defendant Sprint Corporation and Memorandum in Support, filed by Ascom on July 13, 2001, IS GRANTED to the extent discussed above, and IS DENIED in all other respects.

IT IS FURTHER ORDERED that Sprint SHALL PRODUCE the documents requested by Ascom and SHALL PROVIDE its answers to Ascom's interrogatories within 10 days of the release of this order or within such other period of time as the parties may mutually agree.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg  
Administrative Law Judge